IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.01.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAN

W.P.Nos.10189 to 10196 of 2003
and
MP.Nos.11060, 11062, 11064, 11066, 11068, 11070, 11072 & 11074 of 2005

1.Ramasamy (in WP.No.10189 of 2003)
2.K.Chandra (in WP.No.10190 of 2003)
3. Selvan (in WP.No.10191 of 2003)
4. Chinnasamy Gounder (in WP.No.10192 of 2003)
5. Rajendran (in WP.No.10193 of 2003)
6. Thangaraj (in WP.No.10194 of 2003)
7. Alamelu (in WP.No.10195 of 2003)
8. Ramaraj (in WP.No.10196 of 2003) ... Petitioners

Versus

1.The Deputy Registrar of
Cooperative Societies,
Perambalur, Perambalur District.

2.The Perambalur Agricultural Producers
Cooperative Marketing Society Ltd,
R-1273, Rep by its Managing Director,
Perambalur - 621212,
Perambalur District. ... Respondents
(in all the writ petitions)

Common Prayer : Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari calling for the records pertaining to the judgement and decree dated 27.02.2004 made in C.M.A.C.S.Nos.8, 9, 10, 13, 14, 15, 16 and 26 of 2002 on the file of the District Court, Perambalur confirming the surcharge order dated 08.11.1999 made in Na.Ka.No.1543/99 Sa.Pa. passed by the 1st respondent herein, quash the same.

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For Petitioners : Mr. N.Manokaran

For Respondents : Mrs.T.Girija
Govt Advocate (Co-op) for R1
Mr.S.Umapathy
for R2
(In all the writ petitions)

COMMON ORDER

The writ petitions on hand are filed challenging the judgment and decree dated 27.02.2004 made in C.M.A.C.S.Nos.8, 9, 10, 13, 14, 15, 16 and 26 of 2002 on the file of the District Court, Perambalur confirming the surcharge order dated 08.11.1999 made in Na.Ka.No.1543/99 Sa.Pa. passed by the 1st respondent.

2. The admitted facts are that the writ petitioners are the Ex-Directors of the 2nd respondent / Cooperative Society. The writ petitioners admittedly, passed a resolution enhancing the salary of the employees of the 2nd respondent Cooperative Society. During the audit, the Authorities Competent found that fixing of salary in excess caused financial loss to the 2nd respondent Society and the Board of Directors passed such a resolution in violation of the guidelines issued by the Registrar of Cooperative Societies in this regard.

3. The salary of the employees Cooperative Society ought to be fixed in accordance with the provisions of the Cooperative Societies Rules as well as the guidelines issued by the Registrar, of

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Cooperative Societies in this regard. In view of the fact that the Ex-Directors had passed resolution enhancing the salary of the employee of the 2nd respondent exorbitantly by entering in to the settlement under Section 18(3) of the Industrial Disputes Act.

4. The statutory enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act was ordered. The Enquiry Officer conducted an enquiry and submitted his final report under Section 81 of the Act within the time frame fixed. Based on the final report of Section 81 enquiry, a surcharge proceedings were initiated against all the writ petitioners by invoking the powers under Section 87(1) of the Tamil Nadu Cooperative Societies Act.

5. Admittedly, a notice under Section 87(1) was issued to all writ petitioners and the writ petitioners had submitted their respective explanations/objections with reference to the allegations set out in the notice issued under Section 87(1) of the Act.

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6. The learned counsel appearing on behalf of the writ petitioner states that, though actions were initiated under Section 87(1) of the Tamil Nadu Cooperative Societies Act, no enquiry contemplated under Section 87(4) of the Act had been complied by the first respondent/Deputy Registrar of the Cooperative Societies. The power conferred under Section 87 is a Quasi Judicial power

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and the Competent Authorities are empowered to summon the witnesses, examine the records and complete the procedures by following the Code of Civil Procedure.

7. Thus, an enquiry/trial in detail is contemplated under the provisions of the Act and the said procedures had not been followed and the unilateral decision was taken by the first respondent in a surcharge proceedings and the orders was passed. The learned District Judge/Special Cooperative Tribunal also had not considered this ground raised by the writ petitioners. Contrarily, the learned District Judge rejected the petitions on the ground that an opportunity was provided and the writ petitioners had submitted their explanations in respect of the notice issued under Section 87(1) of the Act. Reiterating the said procedure, the learned counsel for the writ petitioners contends that there is no findings in this regard, either in the surcharge order or in the judgement and decree passed by the learned District Judge/Special Cooperative Tribunal. Thus, the writ petitions ought to be considered.

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8. The learned counsel appearing on behalf of the first respondent disputed the contentions by stating that an opportunity was provided to the writ petitioners and the writ petitioners had submitted their explanation/objection in respect of the allegations set out in the notice issued under Section 87(1) of the Act. Thus,

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the procedures contemplated were complied with and there is no infirmity as such.

9. The learned counsel appearing on behalf of the 2nd respondent Cooperative Society also emphasised the same point by reading the order passed by the learned District Judge in para 15 which states that, "the Appellants have submitted their objection for the enquiry report. No where in the objection, they have stated that the enquiry report was not furnished to them. But a detailed objection was filed by each appellant. So the contention of the appellant at this belated sage is not acceptable. A paper is available in the bundle with signatures of the appellant accepting the receipt of copy of report".

10. With reference to the said argument, this Court is of an opinion that, the said observation was made by the learned District Judge/ Special Cooperative Tribunal only with reference to the enquiry report served on the Appellant and the objections submitted by the writ petitioners on the enquiry report. However, there is no whisper in respect of the enquiry to be conducted under Section 87(4) of the Tamil Nadu Cooperative Societies Act. Nowhere in the order there is a discussion or findings in respect of any such enquiry.

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11. The learned counsel for the respondents are unable to brought to the notice of this Court in respect of any such findings either in the surcharge order passed under Section 87 of the Act or in the Judgement or decree passed by the learned District Judge. In this regard, it is relevant to extract the contentions in Section 87(4) of the Act.

> *"(4) The Registrar or the person authorized by him, shall, when acting under this section, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:-*
> *(a) summoning and enforcing the attendance of any person and examining him on oath;*
> *(b) requiring the discovery and production of any documents;*
> *(c) reception of evidence on affidavits;*
> *(d) requisitioning any public record from any count or office;*
> *(e) issuing commission for examining of witnesses."*

12. The said provision contemplates that the Registrar or the person authorized by him shall, when acting under the Section have all the powers of the Civil Court, while trying a suit by the Code of Civil Procedure,1908. Thus, the enquiry/trial under Section 87(1) Tamil Nadu Cooperative Societies Act contemplates summoning and enforcing the attendance of any person and examination him on oath, requiring the discovery and production of any document, reception of evidence on affidavits, requisitioning any public record from any count or office, issuing commission for

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examining of witnesses. The Authorities concerned had to conduct the trial/enquiry in the manner prescribed under the Act. If in the event of not availing the opportunity by the persons concerned, the said submissions are also to be recorded by the original Authority. Therefore, the denial of opportunity is one aspect of the matter and not availing the opportunity is another one.

13. However in the present case the opportunity of trial had not been afforded to the writ petitioners and therefore this Court is of an opinion that the present writ petitions are fit cases for remand. Accordingly, the judgment and decree dated 27.2.2004 made in C.M.A.C.S.Nos.8, 9, 10, 13, 14, 15, 16 and 26 of 2002 on the file of the District Court, Perambalur, confirming the surcharge order dated 8.11.1999 made in Na.Ka.No.1543/99 Sa.Pa passed by the first respondent, are quashed.

14. The first respondent is directed to issue a fresh notice under Section 87(1) of the Tamil Nadu Cooperative Societies Act within a period of 4 weeks from the date of receipt of a copy of this order setting out all the facts and circumstances and thereafter conduct an enquiry/trial by following the procedures contemplated under Section 87(4) of the Tamil Nadu Cooperative Societies Act and thereafter pass orders on merits and in accordance with law within a period of three months thereafter.

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15. With these directions, the writ petitions stand allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes

Internet: Yes

Speaking Order

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To

1.The Deputy Registrar of
Cooperative Socities,
Perambalur, Perambalur District.

2.The Perambalur Agricultural Producers
Cooperative Marketing Society Ltd,
R-1273, Rep by its Managing Director,
Perambalur - 621212,
Perambalur District.

3. TATA Iron & Steel Company Ltd,
through its chief,
Titania Building limit,
Elderado Building 6th floor,
No.112, Mahatma Gandhi Salai,
Madras-34.

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S.M.SUBRAMANIAM. J.,

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